## Bill

Received: 02/09/2007  Wanted: As time permits  For: Sheryl Albers (608) 266-8531				Received By: pkahler				
				Identical to LRB:  By/Representing: <b>Terri Griffiths</b>				
								This file
May Co	ontact:							
Subject Submit	Dom. F	Rel cust./plac	<b>:./vis.</b>		Extra Copies:			
_	er's email:	Rep.Alber	rs@legis.wis	sconsin.gov				
Topic:	of custody and		ment studies			g salah s		
Instruc	tions:							
See Atta	ached							
Draftin	g History:							
Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required	
/?	pkahler 02/12/2007	jdyer 03/02/2007						
/1			nnatzke 03/05/200	)7	sbasford 03/05/2007			
/2	pkahler 03/15/2007	jdyer 03/16/2007	pgreensl 03/16/200	)7	sbasford 03/16/2007	cduerst 04/02/2007		

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# Bill

Received: 02/09/2007  Wanted: As time permits  For: Sheryl Albers (608) 266-8531  This file may be shown to any legislator: NO  May Contact:				Received By: pkahler			
				Identical to LRB:			
				By/Representing: Terri Griffiths			
				Drafter: <b>pkahler</b> Addl. Drafters:			
	ter's email: copy (CC:) to:	Rep.Alber	rs@legis.wi	sconsin.gov			
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Topic: Reports Instruc	of custody and	physical place	ment studies	\$			
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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required
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/2	pkahler 03/15/2007	jdyer 03/16/2007	pgreensl 03/16/200	07	sbasford 03/16/2007		

**LRB-1903** 03/16/2007 09:53:55 AM Page 2

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This file may be shown to any legislator: NO	Drafter: pkahler		
May Contact:	Addl. Drafters:		
Subject: <b>Dom. Rel cust./plac./vis.</b> Submit via email: <b>YES</b>	Extra Copies:		
Requester's email: Rep.Albers@legis.wisconsin	.gov		
Carbon copy (CC:) to:			
Pre Topic:			
No specific pre topic given			
Topic:  Reports of custody and physical placement studies			
Instructions:			
See Attached			
Drafting History:			
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Bill

Received: 02/09/2007 Received By: pkahler

Wanted: **As time permits** Identical to LRB:

For: Sheryl Albers (608) 266-8531 By/Representing: Terri Griffiths

This file may be shown to any legislator: **NO**Drafter: **pkahler** 

May Contact: Addl. Drafters:

Subject: Dom. Rel. - cust./plac./vis. Extra Copies:

Submit via email: YES

Requester's email: Rep.Albers@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Reports of custody and physical placement studies

Instructions:

See Attached

**Drafting History:** 

<u>Vers.</u> <u>Drafted</u> <u>Reviewed</u> <u>Typed</u> <u>Proofed</u> <u>Submitted</u> <u>Jacketed</u> <u>Required</u>

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FE Sent For:

<END>

# **Bill Request Form**

# Legislative Reference Bureau One East Main Street, Suite 200

Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.
Date $2-5-07$
Legislator, agency, or other person requesting this draft  Person submitting request (name and phone number)  Term Griffiths L-8
Person submitting request (name and phone number) Tevn Griffiths 6-8
Persons to contact for questions about this draft (names and phone numbers)
Describe the problem, including any helpful examples. How do you want to solve the problem?  See attached  Ligal custody and physical  Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.  You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2005 LRB-2345/1 or 2003 AB-67).
Requests are confidential unless stated otherwise. May we tell others that we are working on his for you?  YES NO
If yes: Anyone who asks? YES NO Any legislator? YES NO
Only the following persons
o you consider this request urgent? YES NO If yes, please indicate why
hould we give this request priority over any pending request of this legislator, agency, or person?

## LEGAL ACTION OF WISCONSIN, INC.

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January 24, 2007

Representative Sheryl Albers State Capitol P.O. Box 8952 Madison, WI 53708

Re: Amendment to S. 767.405 (14) (b) to require that the results of a legal custody and physical placement study in a family law action be introduced in accordance with the rules of evidence, so that a party may cross examine a witness about the custody and physical placement recommendations that are made to the court.

Dear Representative Albers:

I may be mistaken, but I thought I heard you raise some question last session about the evidence that is involved in the legal custody and physical placement studies that are performed in family law actions. We have a concern about s. 767.405 (14)(b), because it allows the court to make legal custody and physical placement recommendations a part of the record, without ever requiring the persons who performed the study to appear in court to explain how they reached their conclusions and without ever allowing the parties to cross examine them.

I know that you have some extensive experience in theses cases, so I was wondering whether you have the same concern about the operation of that statute as we do. If you do, we would like to ask whether you would be interested in authoring legislation that would make the following simple amendment to the statute, by adding the last sentence below (attached is a copy of the statutes):

767.405 (14) (b) The person or persons investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to the parties. The report shall be a part of the record in the action, unless the court orders otherwise. If the report is to be made a part of the record in the action it shall be offered and incorporated in accordance with the rules of evidence.

What happens now, under the statutes, is that a legal custody and physical placement study, that is commissioned by the county – or two or more contiguous counties – makes recommendations about who is to get physical placement or legal custody, without giving the parties the





Letter to Representative Sheryl Albers January 24, 2007 Page Two

opportunity to ask questions about how the study was done or how the recommendations were arrived at. Now, if the parties are smart enough, or if they have attorneys, they might get the judge to allow them to ask that the recommendations be introduced in accordance with the rules of evidence. But there is no guarantee that will happen. And if they are not represented by attorneys, it is almost certain not to happen, because the lay person does not understand that this can be requested.

The requirement that the report be introduced in accordance with the rules of evidence simply requires that the person who conducted the study, or a qualified supervisor, be required to take the stand and tell the court how the study was done and how the recommendations were arrived at. This allows a party to the action to ask or cross examine the witness to make sure that the study was done properly and that there was no misleading or false information that was involved in the making of the report. By following this procedure, the court is given an opportunity to more correctly evaluate the recommendations that are being made.

The importance of this is that, the statutes require that the following very significant issues be investigated by these studies, under s. 767.405 (14)(a)

- 1. The conditions of the child's home.
- 2. Each party's performance of parental duties and responsibilities relating to the child.
- 2m. Whether either party has engaged in interspousal battery, as described in s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12 (1)(am).
- 3. Any other matter relevant to the best interest of the child

The custody and placement studies are performed either directly by county staff (family court counseling) or they are performed by entities that are contracted with through mediators or family court counseling. The social workers and others who engage in the study are making recommendations about which parent will have what legal custody rights and which parent will have physical placement for what period of time. These are very important matters for both the parents and for the children.

As you know, the right to legal custody confers upon a parent the right to make major decisions regarding a child's education, religion, medical treatment, ability to obtain a motor vehicle license, and the like. The right to physical placement determines how long and how regularly a parent may live with a child and under what circumstances.

These are profound interests for parents. Without any question being given to these recommendations, the court will simply incorporate the recommendations into the record. Those recommendations will likely result in orders and judgments being entered to enforce the recommendations. Once judgements or orders are entered, they are difficult to undo at a later

Letter to Representative Sheryl Albers January 24, 2007 Page Three

stage. Under s. 767.451, legal custody and physical placement orders may not be revised within two years after they are initially entered, unless a party can show that they are physically or emotionally harmful to the child. After two years, these same orders may not be modified unless there is a substantial change in circumstances and it is presumed that the current orders are in the best interest of the child.

Who would be opposed to this legislation? Although I do not know for sure, it may be that the legislation may be disfavored by the social workers and supervisors who conduct these studies, either as county employees or as members of separate entities, especially mediation, who are contracted with by the counties. It may be that these staff would be opposed to having to be available to appear in court.

I raised this issue at a hearing in the Senate on the bill recodifying Chapter 767 last session, and it is my recollection that the counties association did not have a problem with this proposal, although I don't speak for them.

The Senate committee did not want to adopt this amendment at the time, because it amounted to a substantive change to a bill that was supposed to be more technical in nature.

While the interest of the staff of the county, family court counseling, mediation, or other entity contracted with -- with respect to the time involved in these proceedings — may be of some consideration, the profound interests of the parents and the children at stake in these proceedings far outweighs those concerns

In the end, this is just a matter of simple fairness.

A Hudersen

Thank you for your consideration of this proposal. If you are interested in introducing this legislation, we will be more than happy to testify and provide whatever help would like.

Sincerely,

Robert J. Andersen

Staff Attorney

(608) 256-3304 x 106

rja@legalaction.org

session will cause undue hardship or would endanger the health or safety of one of the parties and the bases on which the court may make its determination.

- (b) If both parties to any action affecting the family wish to have joint legal custody of a child, either party may request that the court refer the parties to the director of family court services for assistance in resolving any problem relating to joint legal custody and physical placement of the child. Upon request, the court shall so refer the parties.
- (c) A person who is awarded periods of physical placement or a child of that person, a person with visitation rights, or a person with physical custody of a child may notify a circuit court commissioner of any problem he or she has relating to any of these matters. Upon notification, the circuit court commissioner may refer any person involved in the matter to the director of family court services for assistance in resolving the problem.
- (6) ACTION UPON REFERRAL. (a) Whenever a court refers a party to the director of family court services for possible mediation, the director shall assign a mediator to the case. The mediator shall provide mediation if he or she determines that it is appropriate. If the mediator determines that mediation is not appropriate, he or she shall so notify the court. Whenever a court refers a party to the director of family court services for any other family court service, the director shall take appropriate action to provide the service.
- (b) Any intake form that the family court services requires the parties to complete before commencement of mediation shall ask each party whether either of the parties has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).
- (7) PRIVATE MEDIATOR. The parties to any action affecting the family may, at their own expense, receive mediation services from a mediator other than one who provides services under sub. (3). Parties who receive services from a mediator under this subsection shall sign and file with the director of family court services and with the court a written notice stating the mediator's name and the date of the first meeting with the mediator.
- (8) Initial session of mediation required. (a) Except as provided in par. (b), in any action affecting the family, including an action for revision of judgment or order under s. 767.451 or 767.59, in which it appears that legal custody or physical placement is contested, the parties shall attend at least one session with a mediator assigned under sub. (6) (a) or contracted with under sub. (7) and, if the parties and the mediator determine that continued mediation is appropriate, no court may hold a trial of or a final hearing on legal custody or physical placement until after mediation is completed or terminated.
- (b) A court may, in its discretion, hold a trial or hearing without requiring attendance at the session under par. (a) if the court finds that attending the session will cause undue hardship or would endanger the health or safety of one of the parties. In making its determination of whether attendance at the session would endanger the health or safety of one of the parties, the court shall consider evidence of the following:
- 1. That a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).
- Interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).
- 3. That either party has a significant problem with alcohol or drug abuse.
- 4. Any other evidence indicating that a party's health or safety will be endangered by attending the session.
- (c) The initial session under par. (a) shall be a screening and evaluation mediation session, including screening for domestic abuse, to determine whether mediation is appropriate and whether both parties wish to continue in mediation.
- (9) PROHIBITED ISSUES IN MEDIATION. If mediation is provided by a mediator assigned under sub. (6) (a), no issue relating to prop-

erty division, maintenance, or child support may be considered during the mediation unless all of the following apply:

- (a) The property division, maintenance or child support issue is directly related to the legal custody or physical placement issue.
- (b) The parties agree in writing to consider the property division, maintenance or child support issue.
- (10) POWERS AND DUTIES OF MEDIATOR. A mediator assigned under sub. (6) (a) shall be guided by the best interest of the child and may do any of the following, at his or her discretion:
- (a) Include the counsel of any party or any appointed guardian ad litem in the mediation.
- (b) Interview any child of the parties, with or without a party present.
- (c) Require a party to provide written disclosure of facts relating to any legal custody or physical placement issue addressed in mediation, including any financial issue permitted to be consid-
- (d) Suspend mediation when necessary to enable a party to obtain an appropriate court order or appropriate therapy.
- (e) Terminate mediation if a party does not cooperate or if mediation is not appropriate or if any of the following facts exist:
- 1. There is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2).
- 2. There is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am).
- 3. Either party has a significant problem with alcohol or drug abuse.
- 4. Other evidence which indicates one of the parties' health or safety will be endangered if mediation is not terminated.
- (12) MEDIATION AGREEMENT. (a) Any agreement that resolves issues of legal custody or periods of physical placement between the parties and that is reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney, if any, for each party and by any appointed guardian ad litem, and submitted to the court to be included in the court order as a stipulation. Any reviewing attorney or guardian ad litem shall certify on the mediation agreement that he or she reviewed it, and the guardian ad litem, if any, shall comment on the agreement based on the best interest of the child. The mediator shall certify that the written mediation agreement accurately reflects the agreement made between the parties. The court may approve or reject the agreement, based on the best interest of the child. The court shall state in writing its reasons for rejecting an agreement.
- (b) If after mediation under this section the parties do not reach agreement on legal custody or periods of physical placement, the parties or the mediator shall so notify the court. Except as provided in s. 767.407 (1) (am), the court shall promptly appoint a guardian ad litem under s. 767.407. Regardless of whether the court appoints a guardian ad litem, the court shall, if appropriate, refer the matter for a legal custody or physical placement study under sub. (14). If the parties come to agreement on legal custody or physical placement after the matter has been referred for a study, the study shall be terminated. The parties may return to mediation at any time before any trial of or final hearing on legal custody or periods of physical placement. If the parties return to mediation, the county shall collect any applicable fee under s. 814.615.
- (13) POWERS OF COURT. Except as provided in sub. (8), referring parties to mediation under this section does not affect the power of the court to make any necessary order relating to the parties during the course of the mediation.
- (14) LEGAL CUSTODY AND PHYSICAL PLACEMENT STUDY. (a) A county or 2 or more contiguous counties shall provide legal custody and physical placement study services. The county or counties may elect to provide these services by any of the means set forth in sub. (3) with respect to mediation. Regardless of whether a county so elects, whenever legal custody or physical placement

of a minor child is contested and mediation under this section is not used or does not result in agreement between the parties, or at any other time the court considers it appropriate, the court may order a person or entity designated by the county to investigate the following matters relating to the parties:

- 1. The conditions of the child's home.
- 2. Each party's performance of parental duties and responsibilities relating to the child.
- 2m. Whether either party has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).
  - 3. Any other matter relevant to the best interest of the child.
- (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to both parties. The report shall be a part of the record in the action unless the court orders otherwise.
- (c) No person who provided mediation to the parties under this section may investigate the parties under this subsection unless each party personally so consents by written stipulation after mediation has ended and after receiving notice from the person who provided mediation that consent waives the inadmissibility of communications in mediation under s. 904.085.

**History:** 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93–03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109; 2003 a. 130; 2005 a. 443 ss. 8, 56, 57, 181; Stats. 2005 s. 767.405.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

NOTE: 2005 Wis. Act 443, which affected this section, contains explanatory notes.

**Judicial Council Note, 1993.** Subsections (5) (a) and (14) (c) are amended because the rule of inadmissibility under s. 904.085 is not a privilege; it is waivable only if the parties stipulate that the mediator may conduct the custody investigation.

### 767.407 Guardian ad litem for minor children.

- (1) APPOINTMENT. (a) The court shall appoint a guardian ad litem for a minor child in any action affecting the family if any of the following conditions exists:
- 1. The court has reason for special concern as to the welfare of a minor child.
- 2. Except as provided in par. (am), the legal custody or physical placement of the child is contested.
- (am) The court is not required to appoint a guardian ad litem under par. (a) 2. if all of the following apply:
- 1. Legal custody or physical placement is contested in an action to modify legal custody or physical placement under s. 767.451 or 767.481.
- 2. The modification sought would not substantially alter the amount of time that a parent may spend with his or her child.
  - 3. The court determines any of the following:
- a. That the appointment of a guardian ad litem will not assist the court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear.
- b. That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.
- (b) The court may appoint a guardian ad litem for a minor child in any action affecting the family if the child's legal custody or physical placement is stipulated to be with any person or agency other than a parent of the child or, if at the time of the action, the child is in the legal custody of, or physically placed with, any person or agency other than the child's parent by prior order or by stipulation in this or any other action.
- (c) The attorney responsible for support enforcement under s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been acknowledged under s. 767.805 (1) or a substantially similar law of another state or adjudicated for the purpose of determining the paternity of the child,

and the court shall appoint a guardian ad litem, if any of the following applies:

- 1. Aid is provided under s. 46.261, 48.57 (3m) or (3n), 49.19, or 49.45 on behalf of the child, or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child.
- 2. An application for legal services has been filed with the child support program under s. 49.22 on behalf of the child, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child.
- (d) A guardian ad litem appointed under par. (c) shall bring an action or motion for the determination of the child's paternity if the guardian ad litem determines that the determination of the child's paternity is in the child's best interest.
- (e) Nothing in this subsection prohibits the court from making a temporary order under s. 767.225 that concerns the child before a guardian ad litem is appointed or before the guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child.
- (2) TIME FOR APPOINTMENT. The court shall appoint a guardian ad litem under sub. (1) (a) 1. or (b) whenever the court deems it appropriate. The court shall appoint a guardian ad litem under sub. (1) (a) 2. at the time specified in s. 767.405 (12) (b), unless upon motion by a party or its own motion the court determines that earlier appointment is necessary.
- (3) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.
- (4) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and custody studies under s. 767.405 (14). The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.405 (12) and on any parenting plan filed under s. 767,41 (1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.41 (5) (am) 2. The guardian ad litem has none of the rights or duties of a general guardian.
- (4m) STATUS HEARING. (a) Subject to par. (b), at any time after 120 days after a guardian ad litem is appointed under this section, a party may request that the court schedule a status hearing related to the actions taken and work performed by the guardian ad litem in the matter.
- (b) A party may, not sooner than 120 days after a status hearing under this subsection is held, request that the court schedule another status hearing on the actions taken and work performed by the guardian ad litem in the matter.
- (5) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with



# State of Misconsin 2007 - 2008 LEGISLATURE

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LRB-1903/F

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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 $ANACT_{\chi}$ .; relating to: offering and admitting custody studies in accordance with

the rules of evidence.

Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce, if there is a minor child and the parties do not agree on legal custody or physical placement, the parties must be referred to mediation to attempt to resolve the contested issues. The court may order a person or entity designated by the county to conduct a legal custody or physical placement study to investigate such issues as the conditions of the child's home, the parties' performance of parental duties, and whether either party has engaged in domestic abuse. The report that results from the study is submitted to the court, with copies to the parties, and made a part of the record of the action. This bill requires that, if the report is to be made a part of the record, it be offered and received in accordance with the rules of evidence. Consequently, the parties would have the opportunity to question the person who conducted the study and made the report with respect to any statements, conclusions, or recommendations that the person includes in the report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 767.405 (14) (b) of the statutes is amended to read:

1	767.405 (14) (b) The person or entity investigating the parties under par. (a)
2	shall complete the investigation and submit the results to the court. The court shall
3	make the results available to both parties. The report shall be a part of the record
4	in the action unless the court orders otherwise. If the report is to be made a part of
5	the record, it shall be offered and received in accordance with the rules of evidence.

History: 1987 a. 355; 1989 a. 56; 1991 a. 269; Sup. Ct. Order No. 93–03, 179 Wis. 2d xv; 1995 a. 275, 343; 1999 a. 9; 2001 a. 61, 109; 2003 a. 130; 2005 a. 443 ss. 8, 56, 57, 181; Stats. 2005 s. 767.405.

(END)

### Kahler, Pam

From:

Griffiths, Terri

Sent:

Thursday, March 15, 2007 2:04 PM

To: Subject:

Kahler, Pam Draft Change

Attachments:

07-19031 Custody studies Legal Action of WI.pdf



07-19031 Custody studies Legal...

#### Pam,

We need the following change to LRB 1903. It is a reversal of the sentences.

So the LRB draft would be changed as follows:

767.405 (14) (b) The person or entity investigating the parties under par. (a) shall complete the investigation and submit the results to the court. The court shall make the results available to both parties. If the report is to be made a part of the record, it shall be offered and received in accordance with the rules of evidence. The report shall be a part of the record in the action unless the court orders otherwise.

#### Thanks.

Terrí S. Gríffiths Office of Rep. Sheryl Albers 266-8531 877-947-0050



## State of Misconsin 2007 - 2008 LEGISLATURE

LRB-1903/1 PJK:jld:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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AN ACT to amend 767.405 (14) (b) of the statutes; relating to: offering and

admitting custody studies in accordance with the rules of evidence.

## Analysis by the Legislative Reference Bureau

Under current law, in an action affecting the family, such as a divorce, if there is a minor child and the parties do not agree on legal custody or physical placement, the parties must be referred to mediation to attempt to resolve the contested issues. The court may order a person or entity designated by the county to conduct a legal custody or physical placement study to investigate such issues as the conditions of the child's home, the parties' performance of parental duties, and whether either party has engaged in domestic abuse. The report that results from the study is submitted to the court, with copies to the parties, and made a part of the record of the action. This bill requires that, if the report is to be made a part of the record, it be offered and received in accordance with the rules of evidence. Consequently, the parties would have the opportunity to question the person who conducted the study and made the report with respect to any statements, conclusions, or recommendations that the person includes in the report.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 767.405 (14) (b) of the statutes is amended to read:

6	(END)
5	the record, it shall be offered and received in accordance with the rules of evidence.
4	in the action unless the court orders otherwise. If the report is to be made a part of
3	make the results available to both parties. The report shall be a part of the record
2	shall complete the investigation and submit the results to the court. The court shall
1	767.405 (14) (b) The person or entity investigating the parties under par. (a)

### **Duerst, Christina**

From:

Sent:

Griffiths, Terri Monday, April 02, 2007 4:17 PM LRB.Legal

To:

Subject:

Draft Review: LRB 07-1903/2 Topic: Reports of custody and physical placement

studies

Please Jacket LRB 07-1903/2 for the ASSEMBLY.